

SB-0141

A bill for an act entitled: "an act promoting safe schools and creating the Montana schools are for education act; providing definitions; addressing and prohibiting bullying, harassment, or intimidation of students; requiring each school district to adopt a policy prohibiting bullying, harassment, or intimidation; providing minimum requirements for the contents of a school district policy; and requiring the office of public instruction to develop and make available a model policy; establishing the standard of care for liability of school districts; and providing personal immunity from suit for individuals."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Schools Are for Education Act".

NEW SECTION. Section 2. Definitions. (1) "Bullying, harassment, or intimidation" means any persistent threatening, insulting, or demeaning gesture or physical conduct or including any intentional written, verbal, or electronic communication or threat directed against a student that a reasonable person under the circumstances should know will have the effect of:

(a) placing causes a student physical harm, damages a student's property, or places a student in reasonable fear of harm to the student or the student's property;

(b) substantially interfering with a student's educational performance or opportunities and materially interferes with a student's access to an educational opportunity or benefit;

or

(c) substantially disrupting and materially disrupts the orderly operation of a school, regardless of whether the conduct originates on or off school premises and whether the conduct occurs during normal school hours or at any other time.

(2) The term includes retaliation against a victim or witness who reports information about an act of bullying, harassment, or intimidation.

NEW SECTION. Section 3. Bullying of student prohibited. (1) Bullying, harassment, or intimidation of a student enrolled in a public K-12 school or nonpublic accredited school by another student or an employee is strictly prohibited. This prohibition includes but is not limited to bullying, harassment, or intimidation:

(1) (a) in a classroom or other location on school premises;

(2) (b) during any school-sponsored program, activity, or function where the school is responsible for the student, including when the student is traveling to and from school, on a school bus or other school-related vehicle; or

(3) (c) through the use of electronic communication, as defined in 45-8-213, that substantially and materially disrupts the orderly operation of a school or any school-sponsored program, activity, or function where the school is responsible for the student.

(2) A student who is determined by a school district to have engaged in bullying, harassment, or intimidation as defined in [section 2] is subject to discipline in accordance

with the provisions of 20-5-201 and 20-5-202, including suspension, expulsion, and any other sanction authorized by law.

NEW SECTION. Section 4. School district implementation, minimum requirements, model policy, and compliance. (1) By August 1, 2012, each school district shall adopt a policy ~~prohibiting~~ addressing bullying, harassment, or intimidation. — (2) ~~The policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, professional development programs, discipline policies, and other violence prevention efforts.~~

(3) (2) Each district has discretion and control over the development of its policy, but each district's policy must include at a minimum:

(a) a definition of bullying, harassment, or intimidation that includes the definitions provided in [section 2];

(b) a statement prohibiting bullying, harassment, or intimidation of any student as described in [section 3];

(c) a procedure for reporting and documenting reports of acts of bullying, harassment, or intimidation;

(d) a procedure for prompt investigation, as defined in the district policy, of all reports of bullying, harassment, or intimidation and response to all reported acts of bullying, harassment, or intimidation that identifies the persons responsible for the investigation and response;

(e) a procedure for determining whether the reported act is outside subject to the jurisdiction of the school ~~or, district, or authority of another public agency, including law enforcement~~, and a procedure for referral to the necessary persons or entity with appropriate jurisdiction;

(f) a procedure for prompt notification, as defined in the district policy, of the parents or guardian of the victim and perpetrator;

(g) a procedure to protect the victim from further bullying, harassment, or intimidation and to refer victims for appropriate remedial assistance, including counseling, as defined in the district policy;

(h) a procedure for establishing consequences and appropriate remedial action, including counseling, as defined in the district policy, for persons found to have committed acts of bullying, harassment, or intimidation; and

(i) a process for publicizing the policy, including ~~prominent~~ inclusion in each district's or school's student handbook.

(4) (3) ~~To assist school districts in developing a policy under [sections 1 through 4], the office of public instruction shall develop a model policy that must be available to the school districts no later than March 1, 2012. The office of public instruction shall develop and make available to school districts a model policy that meets the criteria in [sections 2 through 4]. This subsection may not be construed to prohibit a school district from exercising its control and discretion to develop policy that meets the criteria in [sections 2 through 4] independent of the model policy.~~

(5) (4) Compliance with [sections ~~1~~ 2 through 4] must be considered during a school's accreditation review pursuant to 20-7-102.

NEW SECTION. Section 5. Liability -- standard of care. (1) This act may not be construed to create any new cause of action against or liability of a school district beyond causes of action and theories of liability that existed prior to [the effective date of this act].

(2) A school district may be held liable for bullying, harassment, or intimidation if it is shown by a preponderance of the evidence that the school district had actual knowledge of the bullying, harassment, or intimidation, that the bullying, harassment, or intimidation was so severe, pervasive, and objectively offensive that it effectively deprived a pupil of access to an educational opportunity or benefit, and that the school district was deliberately indifferent to the bullying, harassment, or intimidation." 3, line 5.

NEW SECTION. Section 6. Personal immunity from suit. An individual investigating or reporting an incident of bullying, harassment, or intimidation as defined in [section 2] or participating in resulting administrative or judicial proceedings is personally immune from any suit, civil or criminal, that might otherwise arise and from any liability that might otherwise be imposed unless the person was grossly negligent, acted in bad faith or with malicious purpose, or provided information knowing the information to be false.

NEW SECTION. Section 57 . Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply to [sections 1 through 4].